

REMARKS

Claims 1-9, 11-20, 22-24, and 26-40 are presently pending in the case. Claims 29-40 have been added. The new claims are supported by the specification as originally filed.

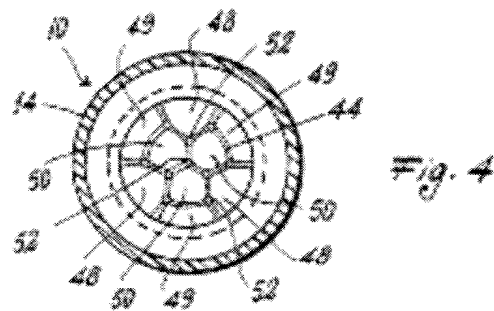
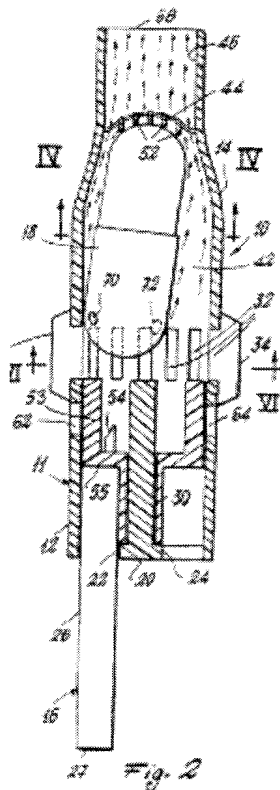
Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Claim rejections under 35 USC §102

The Examiner rejected claims 1-9, 15-20, and 22-24 under 35 USC §102(b) as being anticipated by U.S. Patent 6,705,313 to Niccolai (hereinafter Niccolai). The rejection is traversed.

Niccolai does not anticipate claims 1-9, 15-20, and 22-24. For a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention. Non-disclosure of a single element, feature or limitation of the claim negates anticipation. Independent claim 1, for example, is to an aerosolization apparatus comprising, inter alia, a chamber having a sidewall with a cross-section that is non-circular wherein a receptacle contacts the non-circular cross-section of the sidewall when the receptacle moves within the chamber, whereby when a user inhales, the receptacle is disturbed by contact with the non-circular cross-section of the sidewall. This positively recited feature is not disclosed by Niccolai. Instead, in the Niccolai device, the receptacle 18 contacts a circular cross-section of the chamber (see Figure 2). Since Niccolai does not disclose each and every feature set forth in claim 1, it does not anticipate the claim. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereof under 25 USC §102.

The Examiner points to Column 1 lines 27-35 for support of the contention that Niccolai discloses a non-circular cross-section. However, the cited recitation discloses no such thing. Column 1 lines 27-35 discuss the puncturing mechanism of the device, not the shape of the chamber in Niccolai. Furthermore, at no other place does Niccolai suggest that its disclosed chamber is anything but of a circular cross-section. To the contrary, Niccolai clearly discloses that the disclosed chamber has a circular cross-section. For example, in column 3 lines 41-43, Niccolai states that the structure of the inhaler is "substantially similar to that illustrated in U.S. Pat. No. 4,995,385." As can be seen below, U.S. Pat. No. 4,995,385 clearly discloses a circular cross-section.



Figures 2 and 4 from U.S. Pat. No. 4,995,385

Accordingly, the disclosure of Niccolai that is relied on by the Examiner does not meet the claim limitations and does not anticipate claim 1.

Niccolai also does not anticipate independent claim 15. Claim 15 is to an aerosolization apparatus comprising, inter alia, a chamber having a sidewall with a cross-section that is non-circular wherein a receptacle contacts the non-circular cross-section of the sidewall when the receptacle moves within the chamber, whereby when a user inhales, the receptacle is disturbed by contact with the non-circular cross-section of the sidewall. This feature is not disclosed by Niccolai, and Niccolai does not anticipate the claim.

In addition, Niccolai does not anticipate independent claim 22. Claim 22 is to an aerosolization apparatus comprising, inter alia, a chamber having a sidewall with a cross-section that is non-circular wherein a receptacle contacts the non-circular cross-section of the sidewall when the receptacle moves within the chamber, whereby when a user inhales, the receptacle is disturbed by contact with the non-circular cross-section of the sidewall. Niccolai does not disclose this feature. In addition, claim 22 requires that the non-circular cross-section is along a plane parallel to the longitudinal axis of the chamber. This feature, too, is missing in the disclosure of Niccolai. Accordingly, Niccolai does not anticipate claim 22.

Claims 1-9, 11-14, 16-20, 23, 24, and 29-36 are also not anticipated by Niccolai. Claims 1-9, 11-14, 16-20, 23, 24, and 29-36 depend from one of claims 1, 15 or 22 and are not anticipated by Niccolai for at least the same reasons as the claim from which they depend.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 11-14 and 26-28 under 35 USC §103(a) as being unpatentable over Niccolai. The rejection is traversed.

Niccolai does not render claims 11-14 and 26-28 unpatentable. Claim 11, for example, is to the apparatus of claim 1 wherein the non-circular cross-section comprises one or more projections that extend into the chamber. The Examiner does

not provide any teaching, suggestion, or motivation for making the proposed modification to Niccolai. Furthermore, the Examiner does not posit that the proposed modification is one well within the grasp of a person having ordinary skill in the art at the time of the invention. Accordingly, the Examiner has failed to establish a prima facie case under 35 U.S.C. §103(a). Furthermore there is no showing that there was a known problem for which there was an obvious solution encompassed by the claims. Moreover, the invention of claim 11 provides the unexpected results of deagglomeration, as disclosed in the specification. Withdrawal of the rejections under 35 U.S.C. §103(a) is requested. Claims 12, 13 and 14 are likewise not rendered unpatentable by Niccolai.

Niccolai also does not render independent claim 26 unpatentable. Claim 26 is to a method of aerosolizing a pharmaceutical formulation comprising, inter alia, inhaling to cause a receptacle to move about a non-circular cross section to aerosolize the pharmaceutical formulation. Niccolai does not teach or suggest this feature. The Examiner does not provide any teaching, suggestion, or motivation for making a modification to Niccolai that would result in the claimed invention. Furthermore, the Examiner does not posit that the proposed modification is one well within the grasp of a person having ordinary skill in the art at the time of the invention. Accordingly, the Examiner has failed to establish a prima facie case under 35 U.S.C. §103(a). Furthermore there is no showing that there was a known problem for which there was an obvious solution encompassed by the claims. Moreover, the non-circular cross-section provides the unexpected result of deagglomeration, as discussed in the specification. Withdrawal of the rejections under 35 U.S.C. §103(a) is requested.

Claims 27, 28, and 37-40 are also not anticipated by Niccolai. Claims 27, 28, and 37-40 depend from claim 26 and are not rendered unpatentable by Niccolai for at least the same reasons as the claim from which they depend. Withdrawal of the rejections under 35 USC §103(a) is requested.

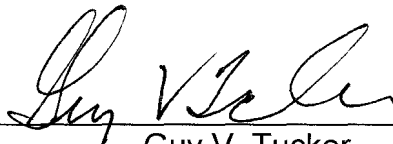
Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

Dated: 14 FEB 2008

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